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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/746,537	12/20/2000	Theo Postmes	1071 1010	1086

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EXAMINER
GOLLAMUDI, SHARMILA S

ART UNIT	PAPER NUMBER
1616	

DATE MAILED: 10/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/746,537	Applicant(s) POSTMES, THEO	
	Examiner Sharmila S. Gollamudi	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *22 July 2002* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *6-10 and 15-18* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *6-10 and 15-18* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7 .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Receipt for the Extension of Time, Amendment A, and IDS received on July 22, 2002 are acknowledged. Claims 6-10 and 15-18 are included in the prosecution of the application. Claims 1-5 and 11-14 are cancelled.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 6 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 89/07399 in view of von Stering-Krugheim (4273794).

WO 89/07399 discloses a compressed product for improving digestion containing 10-20% wheat bran, 30-40% wheat germ, and the amount of honey can be the equivalent to the mass of the dry ingredients (Note example 1 and pg. 3).

WO does not specify the instant amount of honey.

von Stering-Krugheim discloses compositions containing honey. The reference teaches the common use of honey in foods for its nutritional and medical effect. The reference disclose that honey has a high content of sweet tasting sugars which makes it unacceptable to many people since it is too sweet. Further limitation on the consumption of honey is that people are on a decreased carbohydrate diet and honey contains high content of carbohydrates. (Note col. 1, lines 15-55).

In the absence of showing criticality of the amount of honey, it is deemed obvious to one of ordinary skill in the art to manipulate the amount of honey in the composition. One would be motivated to do so since honey acts as a sweetener in the composition and depending on the desired taste of the product, honey is added accordingly, as taught by von Stering-Krugheim. Further motivation to decrease the amount of honey in WO's composition is to reduce the carbohydrate content of the bar, which allows those on diets to also consume the bar as taught by von Stering-Krugheim.

Claims 7-9 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 89/07399 in view of von Stering-Krugheim (4273794), in further view of Kerkvliet (journal of agricultural Research 35 (3/4): 110-117 (1996).

WO 89/07399 discloses a compressed product for improving digestion containing 10-20% wheat bran, 30-40% wheat germ, and honey where the mass of the dry products is equivalent to the mass of the honey (Note example 1 and pg. 3).

WO does not specify the instant properties of honey.

Kerkvliet teaches that natural occurring honey has the enzyme glucose oxidase. Upon dilution of honey with water, hydrogen peroxide is liberated which in turn inhibits the growth of bacteria. The reference teaches specific peroxide activities for specific honey types and that excessive heating during processing decreases this peroxide value. (Note entire document)

Although WO does not teach the peroxide activity of the honey used, it is deemed obvious to one of ordinary skill in the art that the honey used by WO has the instant properties since Kerkvliet teaches the inherent properties of honey and that

natural occurring honey has peroxide values. Further, in the absence of evidence to the contrary, WO does not teach excessively heating the honey, therefore WO's honey would have the instant properties since Kerkvliet teaches that the only reason for a decreased peroxide value is due to excessive heating of honey during processing.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over WO 89/07399 in view of von Stering-Krugheim (4273794), in further view of Kerkvliet (journal of agricultural Research 35 (3/4): 110-117 (1996), in further view of Aoe et al (5112964).

As set forth above, WO teaches a honey composition for improving digestion. Kerkvliet and Paetzke teach the inherent properties of honey.

WO does not teach cellulose as an additive in the composition.

Aoe et al teach dietary fibers such as hemicelluloses (found in wheat bran), pectin substances, and carboxymethylcellulose show physiological effects. These fibers prevent the absorption of toxic substances in the intestine and are removed with the elimination of the fiber. Further, the dietary fibers increase bowel movement. (Note col. 1, lines 1-35).

Further, It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate cellulose in WO's composition since Aoe teaches cellulose to have physiological advantages for the gastro-intestinal tract in aiding digestion and general health. One would be motivated to use another source of fiber such as carboxymethylcellulose (instant additive) to yield an additive effect.

Response to Arguments

Applicant argues that there is not motivation or suggestion to combine by reciting the examiner's office rejection in its entirety. Applicant argues that none of the references singly or in combination suggest any correlation between peroxide content and it ability to aid in digestion. It is argued that this correlation has been found in the instant invention.

Applicant's arguments have been fully considered but they are not persuasive. Firstly, the examiner points out that the instant claims are product claims and the intended use of the product, i.e. for the relief of heartburn or digestive disorders, does not hold patentable weight unless the prior art and the instant invention have a structural difference.

Secondly, it is noted that the features upon which applicant relies (i.e., the correlation between peroxide values and digestion) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Again the examiner points out that in a product claim, the given role or function of a particular component is not held to be patentably distinct.

Lastly, the examiner points out that the secondary reference, i.e. Kerkvliet, is relied upon to teach the inherent properties of honey, and not the correlation of peroxide values with digestion. To merely recite inherent features of a component does not patentably distinguish the prior art product from the instant invention since the prior art contains the same component and is capable of functioning the same as the instant invention. It is upon the applicant to provide evidence showing WO's honey does not

have the inherent peroxide value when the state of the art clearly teaches honey to have peroxide values. The examiner relies upon Aoe to teach the instant additive since Aoe teaches pectin, cellulose, and bran aid in digestion. Therefore, one would be motivated to add another pectin or CMC to obtain an additive effect since Aoe discloses the instant additives aid in digestion and WO' s composition is intended to improve digestion.

Therefore, a *prima facie* case of obviousness has been established.

Art of Interest

The examiner cites Paetzke's What is Honey as art of interest, which also teaches the inherent properties of honey. Paetzke teaches that on average honey has a water content of 17.1% water and has hydrogen peroxide values. (Note page 6)

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharmila S. Gollamudi whose telephone number is 703-305-2147. The examiner can normally be reached on M-F (7:30-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 703-308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3014 for regular communications and 703-305-3014 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 709-3080196.

SSG

October 16, 2002

JOSE' G. DEES
SUPERVISORY PATENT EXAMINER

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